BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Ashwin Nambiar, M.D.	)	Case No. 800-2015-018867
Physician's and Surgeon's Certificate No. A 138704	)	
Respondent	)	

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 5, 2019.

IT IS SO ORDERED: May 6, 2019.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ASHWIN NAMBIAR, M.D.,** **Physician's and Surgeon's Certificate No. A 138704,** Respondent.	Case No. 800-2015-018867 OAH No. 2019011023

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on March 18 and 20, 2019, in Oakland, California.

Deputy Attorney General Emily L. Brinkman represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Marvin Firestone, M.D, Attorney at Law, represented respondent Ashwin Nambiar, M.D., who was present.

The matter was submitted for decision on March 20, 2019.

FACTUAL FINDINGS

Introduction

1. On October 5, 2015, the Board issued Physician's and Surgeon's Certificate No. A 138704 to Ashwin Nambiar, M.D. (respondent). The certificate was active and current during all times pertinent here.

2. Complainant Kimberly Kirchmeyer is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. On September 25, 2018, she filed the accusation against respondent in her official capacity.

3. Complainant alleges that respondent's license is subject to discipline because: 1) he was convicted of driving under the influence of alcohol, an offense that is substantially related to the practice of medicine, and 2) he suffers from a mental impairment that requires monitoring. Respondent filed a notice of defense and this hearing followed.

Respondent's Training and Employment History

4. Respondent graduated from the University of Virginia with a bachelor's degree in June 1999. He earned his medical degree from the University of Virginia in 2004. Respondent completed a transitional medicine internship at Maimonides in June 2009. He completed a residency in radiology at the State University of New York Downstate (SUNY Downstate) in June 2014. Respondent completed a combined fellowship in body imaging and informatics at the University of Maryland in June 2015. In 2015, respondent was board certified in radiology.

Respondent's Criminal Conviction

5. On December 14, 2015, in the Superior Court of California, County of Sonoma, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content over 0.08 percent); respondent admitted a special allegation pursuant to Vehicle Code section 23578, that his blood alcohol content exceeded 0.15 percent. Imposition of sentence was suspended and respondent was placed on court probation for a period of 36 months, with conditions that included spending four days in county jail, completing the first offender drinking driver program and paying fines and fees.

6. The factual circumstances underlying the conviction occurred on November 23, 2015. At approximately 12:35 a.m., an officer with the Cotati Police Department pulled respondent over after observing him drive past a stop sign without stopping. The officer observed respondent display the objective signs of alcohol intoxication. Respondent failed the field sobriety tests and was arrested. At the time of his arrest, respondent had Depakote,[1] Risperidone[2] and Cogentin[3] in his pocket. Respondent explained to the officers that these were prescribed to him because he had been diagnosed with Bipolar Disorder. A blood test

[1] Depakote is the trade name for divalproex sodium; it is used to treat migraine headaches, epilepsy, and the manic episodes associated with bipolar disorder. It is a central nervous system depressant.

[2] Risperidone is an antipsychotic medication used to treat schizophrenia and the manic episodes of bipolar disorder.

[3] Benztropine is the generic name for Cogentin. It is used to treat muscle spasms.

revealed respondent's blood alcohol content to be 0.19 percent.

Respondent's Mental Health Condition

7. Respondent was first diagnosed with Bipolar Disorder in 2009. He has experienced five inpatient psychiatric admissions due to manic episodes. Respondent's first manic episode occurred in 2009, while he was a first-year radiology resident at SUNY Downstate. He took a month off of his residency, and returned. The first hospitalization occurred in early February 2010. He was admitted for grandiose and paranoid delusions. At discharge he was diagnosed with Bipolar I Disorder and started on a medication regimen of Abilify (an antipsychotic medication). While living in New York, he was treated by a psychiatrist, but he did not accept his diagnosis at that time and was poorly medication compliant.

8. Respondent returned to his residency on March 3, 2010, but quickly decompensated back to his delusional thinking. His second inpatient psychiatric admission followed shortly thereafter, in April 2010. Upon discharge, respondent's medication was changed to include Depakote. Again, he was poorly medication compliant and did not fully accept his diagnosis. Respondent was on medical leave from April 8, 2010, until May 31, 2010. Due to his leaves, respondent lost a year of residency, extending it to five years.

9. Respondent took another leave of absence beginning on January 18, 2012. His third psychiatric admission occurred around February 2012 while he was a second-year resident. He was admitted for grandiosity and upon discharge his medication regimen was changed to include Risperidone at bedtime and Depakote daily.

10. Respondent's fourth psychiatric admission occurred during the spring of 2014 when he was a fourth-year resident. By this point his parents and brother were heavily involved in his care and it was his brother who took him to the hospital. Respondent had been displaying signs of grandiosity and paranoia. After discharge, his medications were adjusted by increasing his evening dose of Risperidone.

11. Beginning in September 2015, after moving to Sonoma, California, respondent began treatment with psychiatrist Alan Dubin, M.D. Respondent advised Dr. Dubin that he had a maternal aunt who had committed suicide, and a cousin who was paranoid. Respondent reported drinking two to three beers daily at that time.

12. Respondent's arrest occurred not long after he moved to Sonoma for a job offer that was rescinded while he was waiting for his California medical license to be issued. Respondent was somewhat lonely in the area. A new friend invited him out for the evening to cheer him up. He had a beer and a shot of whiskey at dinner, then they went "go carting." Afterward, they went to a bar where respondent drank mixed drinks. He is not sure how many he had. Respondent admits driving through a stop sign and driving under the influence. He had prescribed medications in his pocket in case he needed to take them before he returned home.

13. From October 2015 until March 2016, respondent was employed as a radiologist by Dynamic Imaging Teleradiology. From March 2016 through November 2017, respondent was employed as a radiologist in locum tenens positions for various hospitals, mainly in California.

14. In March 2016, respondent relocated to the San Francisco Bay Area. Dr. Dubin transferred respondent's care to psychiatrist Joshua Gibson, M.D. Dr. Gibson's records indicate that when depressed, respondent has had hypersomnia, low appetite, low mood, poor concentration; when manic, respondent has had grandiosity, "change in thought pattern more than speed (able to see what he's thinking and then a sensation of being above it, observing)"; and psychotic symptoms with only the first manic episode. Respondent had been on Adderall for hypersomnia and Klonopin[4] for disrupted sleep.

15. On June 21, 2016, respondent reported to Dr. Gibson that he was enjoying locums tenens work and had been stable. Respondent had been compliant with treatment.

16. On August 8, 2016, respondent began working as a radiologist at Radnet in Oakland. He reported to Dr. Gibson on August 9, that he was feeling engaged and enjoying his work. Respondent reported that he had been sober from alcohol since February 2016, and considered it the "best decision I've ever made." Dr. Gibson recommended that respondent continue to abstain from alcohol use. Respondent had been compliant with treatment. On August 16, respondent reported experiencing hypomanic symptoms. Dr. Gibson recommended increasing his use of Klonopin at night.

17. On September 28, 2016, respondent reported to Dr. Gibson that he had discontinued the use of Adderall without telling Dr. Gibson. His focus had been a bit worse and he was more grandiose. His reality testing was somewhat impaired. Respondent and Dr. Gibson were concerned about the symptoms. As of October 3, 2016, respondent reported continued symptoms; Dr. Gibson adjusted his medications.

18. On October 4, 2016, Radnet requested respondent to have Dr. Gibson complete a fitness for duty certification. Dr. Gibson completed the evaluation, taking respondent off work until October 24, 2016, due to a lack of focus and the inability to process relationally at the level necessary for work. On November 16, 2016, Dr. Gibson released respondent to work at 50 percent time until the beginning of December 2016. Respondent's employment with Radnet ended in December 2016.

19. Dr. Gibson closed his office shortly thereafter and respondent transferred his care to psychiatrist Frederick Huang, M.D. Dr. Huang's records were not produced in evidence.

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[4] Klonopin is the trade name of Clonazepam, a benzodiazepine; it produces central nervous system depression.

20. After abstaining from alcohol for over a year, in the fall of 2017, respondent began to drink a glass of wine every few weeks during social occasions.

21. In November 2017, respondent experienced his fifth inpatient psychiatric admission after developing grandiosity and mild paranoia. His medications were adjusted after discharge. Respondent moved to Arizona following his hospitalization to be closer to his brother and parents. He now lives with his parents in Phoenix.

22. From April 2018 through November 2018, respondent was employed by the Veteran's Administration National Teleradiology Program.

23. Since July 2, 2018, respondent has treated with psychiatrist Kathryn Kanner, M.D. Respondent did not offer in evidence his treatment records with Dr. Kanner. Dr. Kanner wrote a letter dated February 7, 2019, describing her treatment of respondent. Dr. Kanner reports that respondent is currently prescribed Depakote and Seroquel.[5] Dr. Kanner attempted to lower his dose of Seroquel, which prompted signs of hypomania, but significantly milder than previous experiences; he did not require hospitalization, but recognized the classic symptoms of racing thoughts, decreased need for sleep, paranoia, and grandiosity.

Dr. Kanner increased the dosage over time and changed it to an extended release formulation with good results. Dr. Kanner reports that respondent is compliant with her suggestions and has made lifestyle changes, including an earlier bedtime, daily physical activity and limiting alcohol consumption, as well as medication dose increases and follow up care. Dr. Kanner has observed respondent display good insight into his condition and judgment concerning his mental health needs.

24. Respondent sees Dr. Kanner regularly and has developed a good relationship with her. After he was first diagnosed, he did not accept his diagnosis or recognize its seriousness; he thought he could control the condition without medications. He now understands that Bipolar Disorder is a chronic, lifelong condition that requires medication.

Evidence of Rehabilitation

25. Respondent regrets his criminal conduct and accepts responsibility for it. Respondent has completed the alcohol and drug program ordered as a term of his criminal probation. At his attorney's recommendation, respondent enrolled in the Aftercare Recovery Monitoring and Support urinalysis program for a period of six months beginning May 12, 2016. As of October 28, 2016, respondent's tests were all negative for alcohol; he had two missed check-ins and tests which were rescheduled. Currently, respondent drinks a glass of wine on occasion, approximately twice per month.

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[5] Quetiapine, sold under the brand name Seroquel, is used to treat bipolar disorder.

26. Respondent has learned to manage his anxiety better by exercising three to four times each week, living near family and a supportive network, and being compliant with his medication. He believes that the extended release formulation of Seroquel has been very beneficial to him, including helping him sleep well, which is important to halting the progression of symptoms. Respondent recognizes that stress can trigger symptoms; getting a good night's sleep, exercising and being surrounded by family all help to alleviate his stress.

27. Respondent attended a conference of current issues in magnetic resonance imaging in orthopedics on October 25 and 26, 2018, earning 18 hours of continuing education credit. He also earned 34 hours of continuing medical education credit by attending Brest Imaging Boot Camp on April 14 to 16, 2016.

28. Respondent would like to return to work. He believes he is safe to practice as a radiologist. When prodromal symptoms have arisen, he has been proactive in taking time off work and seeking treatment.

29. Respondent reports being offered a full time, permanent position with the United States Air Force in Phoenix, which was held up pending the resolution of this proceeding. He believes that the offer from the United States Air Force will be rescinded if his license is placed on probation. Respondent requests an unrestricted license and pledges to inform Dr. Kanner, his employer, his family and the Board if his symptoms interfere with his functioning.

Expert Opinions Offered at Hearing

DR. MANAOAT'S OPINIONS

30. On October 27, 2016, respondent was interviewed by Board representatives. During the interview, respondent reported that he had been diagnosed with Bipolar Disorder in 2009. Respondent agreed to undergo a voluntary mental health examination by a board certified psychiatrist selected by the Board.

31. On March 1, 2017, respondent was evaluated by Jonathan C. Manaoat, M.D., for his mental health examination. Dr. Manaoat requested that the Board obtain respondent's records from SUNY Downstate, which took a year to obtain. Dr. Manaoat wrote a report of his findings and conclusions dated July 2, 2018, and testified at hearing. Dr. Manaoat's testimony was persuasive in all respects.

32. Dr. Manaoat graduated from the University of California, San Francisco School of Medicine in June 2005. He completed a general adult psychiatry residency at California Pacific Medical Center in San Francisco from July 2005 through June 2009. Dr. Manaoat completed a child and adolescent psychiatry fellowship at Brown University's Warren Alpert Medical School from July 2009 through June 2011. He completed a forensic psychiatry fellowship and served as a clinical instructor at the University of Southern California Keck School of Medicine from July 2011 until June 2012. Dr. Manaoat is board-

certified in psychiatry, child and adolescent psychiatry and in forensic psychiatry by the American Board of Psychiatry and Neurology. He has been licensed in California since March 2007.

33. Beginning in September 2012, Dr. Manaoat has been a psychiatrist at Alta Bates Summit Hospital in Berkeley, California. He provides evaluations and management of intensive inpatients and partial hospitalization patients. Dr. Manaoat has also been employed as a psychiatrist by Bay Psychiatric Associates in Berkeley since November 2012.

34. During his fellowship in forensic psychiatry, Dr. Manaoat consulted with the Los Angeles County Sheriff's Department, the Los Angeles County Children's, Juvenile and Superior Courts, the Los Angeles Public Defender's and District Attorney's offices, the Los Angeles County Department of Mental Health and the Los Angeles County Coroner's Office. Dr. Manaoat has consulted with the Board as an expert reviewer since June 2016.

35. Dr. Manaoat interviewed respondent for one hour and 40 minutes, and reviewed his arrest and conviction records, the transcript of his interview with the Board, medical records obtained from Dr. Gibson and Dr. Dubin, respondent's curriculum vitae, a CURES report and documents from SUNY Downstate. After writing his report, Dr. Manaoat reviewed Dr. Kanner's report and the report of respondent's expert witness, R. Scott Johnson, M.D.

36. Dr. Manaoat agrees that respondent suffers from of Bipolar I Disorder. He notes that Bipolar I Disorder is more severe and more difficult to treat than Bipolar II. Dr. Manaoat found that because respondent had suffered from grandiose delusions, his specific diagnosis is Bipolar I Disorder with psychosis.

Bipolar Disorder is a serious lifetime illness with no cure; however, symptoms can be mild over long periods. Individuals with Bipolar I Disorder sometimes have difficulty recognizing symptoms and the impact on their judgment. Stress, a lack of sleep and substance use can trigger the onset of symptoms. Individuals can experience a manic phase, a depressive phase or a mixed episode. Symptoms can impact judgment. During a manic phase, the individual can experience grandiose delusions, insomnia, euphoria, a flight of ideas, rapid thoughts and difficulty of making sense of reality. Medication can help to prevent a relapse of symptoms; however, even when stable on medications, a relapse is possible. Being compliant with medications and psychotherapy, abstaining from alcohol and drugs, getting good sleep and managing stress stabilize symptoms.

37. Dr. Manaoat did not find evidence to support a diagnosis of Alcohol Use Disorder, but opined that abstaining from the use of alcohol was recommended because it can worsen the symptoms of Bipolar Disorder, impede liver function and be used as a form of self-medication. In Dr. Manaoat's opinion, even an occasional glass of wine is a concern for respondent.

38. Dr. Manaoat opined that respondent's Bipolar I Disorder impacts his ability to practice medicine safely; however, he believes that respondent can practice safely if monitored by the Board to ensure that he is compliant with treatment and medications, and he abstains from alcohol.

DR. JOHNSON'S OPINIONS

39. Respondent called psychiatrist R. Scott Johnson, M.D., J.D., L.L.M., to testify at hearing. He attended Rutgers Medical School, graduating in 2010. Dr. Johnson completed his residency in general psychiatry at Baylor College of Medicine in 2015. He attended a forensic psychiatry fellowship at Harvard/Massachusetts General Hospital from July 2015 through June 2016. Dr. Johnson is board certified in psychiatry and forensic psychiatry by the American Board of Psychiatry and Neurology. Dr. Johnson is licensed in California. Dr. Johnson graduated from New York University School of Law in 1997.

40. Dr. Johnson is the owner of San Francisco Psychiatry, where he has performed clinical and forensic psychiatry since February 2017. Dr. Johnson provided persuasive testimony at hearing.

41. Dr. Johnson interviewed respondent and administered testing over a five-hour period on February 12, 2019. He wrote a report of his findings and conclusions dated February 13, 2019. Dr. Johnson reviewed Dr. Manaoat's report and the same materials reviewed by Dr. Manaoat. Dr. Johnson also made collateral telephone calls to Dr. Kanner, respondent's brother Abhilash Nambiar, M.D., and two of respondent's former colleagues, Omar Usmani, M.D., and Cynthia Tan, M.D.

42. Dr. Kanner reported to Dr. Johnson that she had gradually increased respondent's Seroquel dose over the time she had been treating him. She reported being impressed with respondent's willingness and ability to advise her when he feels he is developing the early signs of mania. Dr. Kanner reported that on October 10, 2018, respondent informed her that he had begun to experience racing thoughts, increased energy and irritability. She increased his Seroquel dose and his hypomanic symptoms abated after about 25 days. Dr. Kanner expressed confidence in respondent continuing to apprise her of future hypomanic episodes.

43. Respondent's brother, who is a physician, reported that respondent's medication compliance and insight had improved markedly over the past nine years. He feels that respondent's decision to remain in Phoenix close to family will improve his stability. Respondent's brother reports that respondent had "pretty much" cut out alcohol use because it contributed to his mood destabilization. Dr. Johnson was comforted by this information because consuming alcohol in significant quantities can shift the mood of a patient with Bipolar Disorder.

44. Dr. Usmani worked with respondent from 2008 to 2009. He did not observe erratic behavior or mood instability at that time. Dr. Usmani reported that he had last spoken

to respondent by phone in November 2018, during which time he felt that respondent exhibited mildly grandiose and paranoid thoughts about working for the Central Intelligence Agency. Dr. Usmani had not previously observed such behavior.

45. Dr. Tan has known respondent for about eight months. They worked together at an outpatient facility in Vacaville, California. They would see each other weekly and interact by phone three times per day. Dr. Tan reported that she had never observed erratic or concerning behavior by respondent.

46. Dr. Johnson diagnosed respondent with Bipolar I Disorder with mood-congruent psychotic features. Dr. Johnson agreed with Dr. Manaoat that respondent did not meet the criteria of Alcohol Use Disorder.

47. Dr. Johnson opined that respondent could practice medicine safely without Board monitoring as long as: a) respondent remained under the regular care of a psychiatrist (seen at least every two months); and b) that psychiatrist agrees to notify the Board if a significant concern should arise regarding respondent's mood instability, medication non-compliance, or any other matter of concern.

Dr. Johnson based his opinion that Board monitoring was unnecessary on several factors. First, respondent has been medication compliant while under Dr. Kanner's care and had reported prodromal symptoms to her. Second, respondent has a family support network in Phoenix. Third, he feels Board monitoring will add little benefit if a psychiatrist agrees to assume a monitoring role. Fourth, respondent's mood stability would benefit from gainful employment, which is more difficult to obtain while on probation. Lastly, during his interview, respondent's demeanor displayed sound judgment and insight into his condition.

CONCLUSIONS

48. The experts were in agreement concerning respondent's diagnosis, his medical history and his ability to practice medicine safely if he continues to be under the care of a psychiatrist and compliant with his treatment. The evidence did not establish that Dr. Kanner had agreed to notify the Board if she had concerns about respondent's condition, or what level of concern would prompt such notification. Moreover, absent a probation condition, there is no requirement for respondent to continue treatment with Dr. Kanner or any other psychiatrist. For these reasons, Dr. Manaoat's opinion that Board monitoring was necessary in order to allow respondent to practice safely was more persuasive than the opinion offered by Dr. Johnson.

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LEGAL CONCLUSIONS

Introduction

1. The purpose of an administrative proceeding concerning licensure is not to punish the respondent, but rather is "to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted]." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The goal is the prevention of future harm and the improvement and rehabilitation of the licensee.

2. The standard of proof regarding the charging allegations is "clear and convincing." (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d at 856.) This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit and unequivocal – so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

Unprofessional Conduct: Criminal Conviction

3. Business and Professions Code section 2234, subdivision (a), authorizes the Board to impose discipline against any licensee who is charged with unprofessional conduct, including an act in violation of the Medical Practice Act.

4. Business and Professions Code section 2236, subdivision (a), defines unprofessional conduct as including the conviction of any offense substantially related to the qualifications, functions or duties of a physician and surgeon.

5. California Code of Regulations, title 16, section 1360, states that a crime or act will be considered to be substantially related to the qualifications, functions or duties of a physician and surgeon, if to a substantial degree, it evidences the present or potential unfitness of the certificate holder to perform the functions authorized by the certificate consistent with the public health, safety or welfare. Respondent's act of driving with a blood alcohol content of 0.19 percent evidences the potential unfitness to practice medicine and is therefore substantially related to the practice of medicine. (Factual Findings 5 and 6.)

Cause exists to impose discipline on respondent's certificate pursuant to Business and Professions Code sections 2234, subdivision (a), and 2236, subdivision (a).

Mental Impairment

6. Business and Professions Code section 822 authorizes the Board to impose discipline on a licensee who suffers from a mental impairment that impacts his ability to practice medicine safely. Respondent suffers from Bipolar I Disorder with psychotic features which impacts his ability to practice medicine safely. (Factual Findings 7 through

10, 18, 36 through 38, and 46 through 48.) Cause exists to impose discipline on respondent's certificate.

Disciplinary Considerations

7. Cause for discipline having been established, the issue is what level of discipline is appropriate. The protection of the public is the highest priority for the Board; however, in exercising its disciplinary authority, the Board takes action calculated to aid in the rehabilitation of the licensee whenever possible. (Bus. & Prof. Code, § 2229.)

The Board has adopted Disciplinary Guidelines (12th. Ed. 2016), to promote uniformity, certainty and fairness, and deterrence. The Guidelines have been considered.

Respondent has made important strides in accepting his diagnosis and taking steps to reduce activities that trigger his symptoms. He is well-trained and has much to offer the medical profession as a radiologist as long as he continues to comply with his treatment.

However, respondent continues to experience significant symptoms, and was hospitalized as recently as November 2017; as Dr. Manaoat opined, unrestricted licensure is not appropriate at this time. Attending regular therapy, complying with medication and abstaining from the use of alcohol are important to respondent's ability to practice safely. Complainant recommends revocation, stayed, during a five-year period of probation with conditions that include that respondent abstain from alcohol, submit to biological fluid testing, continue psychotherapy, attend a psychiatric evaluation if requested by the Board, obtain a practice monitor and be prohibited from solo practice. These recommendations are supported by the evidence and will allow respondent to return to practice under conditions designed to protect the public.

ORDER

Physician's and Surgeon's Certificate No. A 138704 issued to respondent Ashwin Nambiar, M.D., is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions.

1. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke

probation shall be filed by the Board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

2. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall

provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist. If respondent continues to reside in Arizona, at the Board's discretion, he may submit for approval the name of a board certified psychiatrist licensed in that state. Upon approval, respondent shall undergo and continue psychotherapy treatment, including management of his psychiatric medications, and any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychiatrist shall consider any information provided by the Board or its designee and any other information the psychiatrist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychiatrist any information and documents that the psychiatrist may deem pertinent.

Respondent shall have the treating psychiatrist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

4. Monitoring – Practice.

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine, and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to

ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

5. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, respondent's practice setting changes and respondent is no longer practicing in a setting in compliance with this Decision, respondent shall notify the Board or its designee within five calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

6. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

8. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and

telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-

practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine. Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

13. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

14. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, petition to revoke probation, or an interim suspension order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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15. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: April 2, 2019

DocuSigned by:
Jill Schlichtmann
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Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept. 25 2018
BY [illegible] ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Ashwin Nambiar, M.D.** 125 2nd Street # 501 Oakland, CA 94607 **Physician's and Surgeon's Certificate No. A 138704,** Respondent.	Case No. 800-2015-018867 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 5, 2015, the Medical Board issued Physician's and Surgeon's Certificate Number A 138704 to Ashwin Nambiar, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states in relevant part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(f) Any action or conduct which would have warranted the denial of a certificate.

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix

the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

7. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

8. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

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FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

9. Respondent is subject to disciplinary action under sections 2234 and 2236 in that he was convicted of driving under the influence. The circumstances are as follows:

10. On or about November 23, 2015, at approximately 12:35 a.m., a police officer with the Cotati Police Department was in a marked patrol car when he observed a vehicle fail to stop at a stop sign at George St. and Old Redwood Highway, Cotati, California. The officer activated a traffic stop on the vehicle.

11. The officer contacted the driver of the vehicle and he was identified as the Respondent using his Maryland driver's license. As the officer was speaking with Respondent he observed that Respondent had red, watery bloodshot eyes, smelled of alcohol, and was slurring his speech. Respondent admitted to drinking two beers before being pulled over.

12. The officer conducted field sobriety tests and determined based on his observations and Respondent's performance on the field sobriety tests that Respondent was driving a motor vehicle while under the influence of alcohol. Respondent agreed to take a blood alcohol test, which the results showed 0.19% blood alcohol concentration.

13. At some point during the traffic stop, the officer asked Respondent if he was taking any medications and Respondent replied "no." During the booking process, the officer found three different pills in Respondent's front pants pocket. The pills were identified as Depakote,[1] Benztropine,[2] and Risperidone.[3] The officer asked Respondent why he did not mention that he was taking medications and Respondent replied that he did not feel the officer needed to know that he was bi-polar and it had been two days since he last took his medication.

14. On or about December 14, 2015, the Sonoma County District Attorney's Office filed criminal charges against Respondent in the Superior Court of Sonoma County, *People v. Ashwin*

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[1] Depakote is the trade name for divalproex sodium, a dangerous drug as defined by section 4022, that is used to treat migraine headaches, epilepsy, and the manic episodes associated with bipolar disorder. It is a central nervous system depressant.

[2] Benztropine is the generic name for Cogentin. It is a dangerous drug as defined by section 4022 and is used to treat the symptoms of Parkinson's or other muscle spasms.

[3] Risperidone is an antipsychotic medication used to treat schizophrenia and the manic symptoms of bipolar disorder. It is a dangerous drug as defined by section 4022.

Prabhakaran Nambiar, Case No. SCR674517. Respondent was charged with two misdemeanor counts for driving under the influence of alcohol in violation of Vehicle Code sections 23152(a) and 23152(b). A special enhancement was also added to both charges under Vehicle Code section 23578 for having a blood alcohol concentration higher than 0.15%.

15. On or about December 14, 2015, Respondent pled no contest to driving under the influence of alcohol with a blood alcohol concentration higher than 0.08% in violation of Vehicle Code section 23152(b) and he admitted the special allegation that his blood alcohol content was higher than 0.15%. The Court placed Respondent on probation for 36 months, ordered him not to drive without a valid California driver's license, to complete a first offender driving under the influence program, ordered him to serve four days in county jail, along with other fines and fees.

SECOND CAUSE FOR DISCIPLINE

(Mental Impairment)

16. Respondent is subject to disciplinary action under section 822 and 2227 in that he suffers from a mental impairment impacting his ability to practice medicine safely. The circumstances are as follows:

17. On or about October 27, 2016, Respondent agreed to undergo a voluntary mental examination by a board certified psychiatrist selected by the Board.

18. On or about March 1, 2017, an expert psychiatrist for the Board conducted a full mental evaluation for the Board.

19. In a report to the Board dated July 2, 2018, the psychiatrist concluded that Respondent suffers from bipolar disorder with psychotic features and his ability to practice medicine safely is impaired. The expert also noted that Respondent is safe to practice medicine only if he is monitored, remains on his medication, and abstains from alcohol.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 138704, issued to Ashwin Nambiar, M.D.;

2. Revoking, suspending or denying approval of Ashwin Nambiar, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Ashwin Nambiar, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED:
September 25, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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